

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2015] NZEmpC 88
EMPC 287/2014**

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

BETWEEN KEERITIHI MERENNAGE
Plaintiff

AND RITCHIES TRANSPORT HOLDINGS
LIMITED
Defendant

EMPC 288/2014

IN THE MATTER OF a challenge to a determination of the
Employment Relations Authority

AND IN THE MATTER of an application for a non-publication
order

AND BETWEEN RITCHIES TRANSPORT HOLDINGS
LIMITED
Plaintiff

AND KEERITHI MERENNAGE
Defendant

Hearing: By memoranda filed on 2 and 5 June 2015 and by telephone on
11 June 2015

Appearances: H White, counsel for Mr Merennage
G Mayes and K Amodeo, counsel for Ritchies Transport
Holdings Limited

Judgment: 11 June 2015

INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS

[1] These proceedings are set down for a five-day hearing commencing on 15 June 2015. The company has applied for non-publication orders in relation to the name and identifying details of the person who made a complaint against Mr Merennage. It was this complaint which prompted the employment investigation ultimately leading to Mr Merennage's dismissal. It is not intended that the complainant will give evidence at the hearing.

[2] Clause 12 of sch 3 to the Employment Relations Act 2000 (the Act) enables the Court to order that “all or any part of any evidence given or pleadings filed or the name of any party or witness or other person not be published,” “subject to such conditions as the Court thinks fit.” The starting point is that proceedings in the Court ought to be conducted openly and subject to report without restriction. The basis on which a non-publication order should be made was recently considered by a full Court. The majority observed that non-publication orders in employment cases will be exceptional, in the sense that such orders will be made in a very small minority of cases, but that an applicant for such an order need not make out, to a high standard, that there are exceptional circumstances that a non-publication order is warranted.¹

[3] The plaintiff’s application is advanced on the grounds that publication has the potential to cause prejudice to the complainant, including in relation to her reputation and emotional wellbeing; that she is not directly involved as a party or a witness in the current proceedings; and that it is not necessary in the interests of justice that her name or identifying details are published. Details of the potential prejudice are fully set out in a brief of evidence filed in these proceedings.

[4] It appears that non-publication in relation to the complainant’s name and identifying details was dealt with on an agreed basis in the Authority.² Mr Merennage consents to the present application.

[5] Having considered the matters raised in support of the application, and after hearing from counsel, I am satisfied that it is appropriate that an interim order be made. At this stage I do not consider that there is a countervailing public interest in

¹ *H v A Ltd* [2014] NZEmpC 92, [2014] ERNZ 38 at [78]-[79].

² *Merennage v Ritchies Transport Holdings Ltd* [2014] NZERA Auckland 406.

knowing the complainant's identity which outweighs the potential prejudicial consequences to her of publication of her identity, which appear to be significant. Accordingly there will be an order prohibiting the publication of the complainant's name and any identifying details until further order of the Court. That order is made on the condition that she be referred to as "the complainant."

[6] The parties may address me further in relation to permanent orders at the hearing.

[7] Costs are reserved.

Christina Inglis
Judge

Judgment signed at 5 pm on 11 June 2015